duly taxed, *B's* Solicitor took the Taxing Master's Certificate to *A's* Solicitor, who gave him a cheque for the amount of the costs and received the Certificate with a receipt endorsed. After the cheque had been paid *B's* Solicitor discovered that *B* was entitled to interest on the amount of the taxed costs, and applied to *A* to pay it. On *A* refusing so to pay *B* moved for an Order directing *A* to attend before the proper officer in order that a Writ of Execution might be issued for the interest. It was contended on behalf of *B* that the acceptance of the cheque and the omission to charge the interest upon the costs owing were not a bar to *B's* right to recover the interest afterwards and reliance was placed upon the House of Lords' decision in *Foakes v. Beer* [3] that payment of a judgment debt under express agreement will not prevent the judgment creditor from exercising his right to recover interest upon his debt. It was argued that the payment of a lesser sum cannot be a satisfaction of a greater debt. In dismissing the application Stirling, J. held that *B*, acting through his Solicitor, must be taken to have accepted the cheque of *A's* Solicitor in full satisfaction of the whole debt due from *A*. Stirling, J. distinguished the facts from the principle laid down in *Foakes v. Beer*, [3] in that in the instant case payment of the debt and its acceptance consisted in the receipt of a cheque, a negotiable instrument, given by a third party. *B* accepted not a negotiable instrument of his debtor *A*, but that of his Solicitor. His Lordship concluded his judgment by holding that the cheque of a third party given as this cheque was, was a satisfaction of the debt and was a good payment. That judgment was unanimously upheld by the Court of Appeal. It does, in fact, accord with the decision of the Court of Appeal in *Vanbergen v. St. Edmunds Properties Ltd.* [6] and the principle enunciated by Lord Hanworth, M.R. that where there is some independent benefit, actual or contingent, of a kind which might in law be a good and valuable consideration — such as a negotiable instrument given by a third party — payment of a lesser sum in satisfaction of a debt may afford a complete accord and satisfaction. The facts before me clearly come within that principle. Here there was a cheque given by a third party in settlement of the debt. On that ground alone I was, therefore, of the opinion that this appeal should be allowed, the decision of the learned Registrar set aside, and the defendant given unconditional leave to defend this action.

It, therefore, becomes unnecessary for me to consider the alternative ground of appeal raised by Mr. Ong Huck Lim that on the general principles of equity, to which I have referred, the respondent, by his conduct in accepting the cheque of a third party in full satisfaction of his claim, must be taken to have waived any strict legal rights he may have had for payment of the full amount of the debt, and is estopped by his conduct in subsequently suing for the full amount of his claim. I merely content myself with saying that on the facts before me this further ground of appeal raised by Mr. Ong Huck Lim is, in my view, well-founded and, if it had been necessary for me to do so, I would have allowed the appeal on this additional ground. It was for these reasons that I allowed this appeal with costs, set aside the Order of the learned Registrar, and granted unconditional leave to the appellant to defend this action.

Appeal allowed.

Solicitors: *Jag-Jit Singh; Presgrave & Matthews.*

LEO FERNANDO v. REG.

[A.Cr.J. (Rose C.J.) June 3, 1959]

[Singapore — Magistrate's Appeal No. 310 of 1958]

Criminal Law and Procedure — Assault — Injuries received in course of struggle between public servant and complainant in course of getting him under control — Conjecture as to circumstances — Discrepancies in accounts given by witnesses.

Police officer — Detention of obstreperous member of public — No justification for retaliatory assault.

In this case the appellant, a police officer, was convicted of voluntarily causing hurt to one Leong Peng Keen. The assault complained of was alleged to have taken place inside the Beach Road Police Station just prior to or in the course of the complainant's removal to the lock-up. Shortly before the alleged assault the complainant, a taxi-driver, had been involved in an altercation with two women passengers in his taxi; his behaviour apparently became so threatening as to lead to the intervention of the appellant. The complainant declined to proceed to the police station peaceably and assaulted the appellant. The complainant alleged that upon arrival at the charge room at the police station he was assaulted by two police officers, one of them being the appellant, in the course of which he received a kick from the appellant on the inner side of his left thigh. The case for the prosecution depended entirely upon the evidence of the complainant and the doctor who examined the complainant on the day following the incident. The

defence was that the complainant was a man of violence who was not only obstreperous outside the police station but continued to be so after his arrival in the charge room. In the course of getting him under control a struggle developed in which the complainant and a number of police officers were concerned. It was suggested that the injuries of which the doctor spoke were incurred in the course of this struggle and that no deliberate kick was aimed at the complainant either by the appellant or by any other police officer at the station.

Held: (1) such an injury to the thigh could have been caused by a kick with a shoe as alleged by the complainant, but it could also have been caused in other ways, and when it comes to conjecture as to the circumstances of the impact which was responsible for this particular injury, a doctor is in no better position to speculate than is anybody else;

(2) the fact that there were discrepancies in the accounts given by witnesses is a matter which might well be in favour of their truthfulness rather than the reverse. It would seem to be highly probable that the persons taking part in a brief and confused episode of this nature would not be in a position to state precisely how any particular bruise or injury was sustained. It is therefore not a ground for suspicion that the defence witnesses should have ventured differing suggestions as to the cause of the injury;

(3) however obstreperous a member of the public may be at the time of his detention outside the police station there can be no justification for a retaliatory assault upon him once he has arrived inside the police station. Any such conduct on the part of a police officer would be regarded by the Courts as a most serious matter, and severe penalties would be appropriate, regardless of the serious professional results which would almost certainly follow a conviction.

MAGISTRATE'S APPEAL.

M. Karthigesu for the appellant.

T. T. Rajah on a *fiat* for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant, a police officer, was convicted of voluntarily causing hurt to one Leong Peng Keen.

The assault of which complaint is made is alleged to have taken place inside the Beach Road Police Station just prior to or in the course of the complainant's removal to the lock-up.

Shortly before the alleged assault the complainant, a taxi-driver, had been involved in an altercation with two women passengers in his taxi. His behaviour apparently became so threatening as to lead to the intervention of Inspector Leo Fernando, the appellant in the present case. The complainant declined to proceed to the police station peaceably and assaulted the appellant. Charges were subsequently preferred in the Magistrate's Court against the complainant in respect of these two episodes, regarding the women passengers and the appellant, and the complainant was convicted on both charges. These matters are relevant in the light of what subsequently occurred.

The complainant alleges that upon arrival at the charge room at Beach Road Police Station he was assaulted by two police officers, one of them being the appellant, in the course of which assault he received a kick from the appellant on the inner side of the left thigh.

The case for the Prosecution depends entirely upon the evidence of the complainant himself and of Dr. Michael Ho, who examined the complainant on the day following the incident. He found three injuries: (1) bruising on the right forearm, (2) bruising on the front of the chest, and (3) a swelling on the inside of the left thigh. The first two injuries were trivial and could obviously have been caused in a variety of ways. The third injury the Doctor describes as a haematoma, which must no doubt have been caused by some impact of considerable force. The complainant was treated on four occasions and no permanent injury resulted.

It is of course clear that such an injury to the thigh could have been caused by a kick with a shoe as alleged by the complainant. It could, too, no doubt have been caused in other ways, and when it comes to conjecture as to the circumstances of the impact which was responsible for this particular injury, a doctor is in no better position to speculate than is anybody else.

As to the actual incident inside the police station, the complainant testified that he was assaulted by two police officers, in the course of which he was kicked on the inner thigh by the appellant. He states that he then squatted down in pain and that after the assault he was conveyed to the lock-up.

The defence, in effect, was that the complainant was a man of violence who was not only obstreperous outside the police station but continued to be so after his arrival in the charge room. In the course of getting him under control a struggle developed in which the complainant and a number of police officers were concerned. It was suggested that the injuries of which the Doctor spoke were incurred in the course of this struggle and that no deliberate kick was aimed at the complainant either by the appellant or by any other police officer at the station.

The learned Magistrate was perfectly correct in taking the view that however obstreperous a member of the public may be at the time of his detention outside the police station there can be no justification for a retaliatory

assault upon him once he has arrived inside the police station. Any such conduct on the part of a police officer would rightly be regarded by the courts as a most serious matter, and severe penalties would be appropriate, regardless of the serious professional results which would almost certainly follow a conviction.

While therefore it cannot be too clearly stated that there can be no condonation of such conduct by a police officer if it is established, the fact remains that in a case such as the present, which depends to all practical purposes upon the single evidence of the complainant, who had shown himself by his conduct just prior to the alleged assault to be a thoroughly truculent person, it is essential that the matter should be examined with the most scrupulous care.

The defence position, in effect, is that consequent upon the complainant's refusal to allow himself to be removed to the lock-up a confused melee ensued, in the course of which the complainant incurred his injuries. The bruises on the chest and fore-arm are easily accounted for as having been occasioned in the tussle. The injury to the thigh less so. One cannot, however, exclude from consideration the possibility that this injury was caused either by the complainant knocking himself or being pushed against a table or other furniture or by his being accidentally trodden upon when in the course of the struggle he fell on the ground.

The learned Magistrate in his grounds of decision attaches importance to the fact that the defence witnesses — all of whom were necessarily police officers — were not in the same story as to how precisely the complainant incurred the injury to his thigh. At another point in his grounds of decision he has stressed that he formed the impression that the Police witnesses who were called for the defence wished to favour the appellant. That, perhaps, is understandable but it seems to me that the learned Magistrate has not given sufficient weight to the consideration that in such circumstances the fact that there were discrepancies in the accounts given by these various officers is a matter which might well be thought to be in favour of their truthfulness rather than the reverse. It would seem to be highly probable that the persons taking part in a brief and confused episode of this nature would not be in a position to state precisely how any particular bruise or injury was sustained. It is therefore, to my mind, not surprising — and certainly not a ground for suspicion — that the defence witnesses should have ventured differing suggestions as to the cause of the injury to the complainant's left thigh.

While one is naturally reluctant to interfere with findings of fact by any tribunal of first instance, I have nonetheless formed the view that the learned Magistrate has attached insufficient weight to the matters posed by the defence.

After the most anxious consideration I have come to the conclusion that, looking at the picture as a whole, it would be dangerous to allow this conviction to stand. The appeal must therefore be allowed, and the conviction and sentence set aside.

Appeal allowed.

Solicitors: *Allen & Gledhill; T. T. Rajah.*

HO KIN LUAN & ANOR. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Rigby and Hepworth JJ.) March 25, 1959]

[Ipoh — F.M. Criminal Reference No. 1 of 1959]

Criminal Law and Procedure — Enhancement of sentence — Criminal Procedure Code (Cap.6), ss.316 and 325 — Grant of certificate under Courts Ordinance, 1948, s.34 — Effect of.

Criminal Law and Procedure — Corporal punishment — Imposition of — Modern tendency of penal procedure and reform — Discretion of Court.

The appellants were prosecuted in the Magistrate's Court and convicted for putting a person in fear of injury in order to the committing of extortion contrary to section 385 of the Penal Code and each was sentenced to one year's imprisonment. Their appeals against conviction came for hearing before Good J. who in dismissing, exercised his revisional jurisdiction increased the sentences in each case to one year's imprisonment and six strokes with a cane. Subsequently the learned Judge took the view that the determination of the appeal involved two points which it was desirable in the public interest should be determined by the Court of Appeal, namely: (i) whether on the proper construction of section 316 of the Criminal Procedure Code, where a convicted person has appealed against his conviction only and the Public Prosecutor has not appealed against the inadequacy of the sentence the Court, on the hearing of the appeal, has jurisdiction to enhance the sentence; and (ii) whether it was proper to impose a sentence of whipping in the present case where the appellants' offence was not proved to have been accompanied by any actual violence on their part. He accordingly granted a certificate under section 34 of the Courts Ordinance to enable the appeal to be heard by the Court of Appeal.